

## **INTRODUCTION**

This standard form of Notice of Availability and Offering Agreement (Multifamily Rental Units, the Notice) is to be completed by the developer and submitted to the Department of Housing and Community Development (DHCD) for each multifamily rental ADU or group of such ADUs which the developer is ready to offer for rent to eligible tenants. It must be submitted before any ADUs are rented and before any Residential Use Permits (RUPS) for the development are issued.

The ADU Ordinance provides that this Notice may be submitted at any time after the issuance of a building permit(s) for the ADU(s) being offered. In practice, in order to begin the process of offering units for rent, other conditions must also be met. To offer units for rent, the Declaration of Affordable Dwelling Units Covenants (Multiple Family Rental Developments) must have been recorded. Evidence that this condition has been met, in the form of a copy of the recorded Covenant, must be provided as a part of this Notice.

Also, in order to refer eligible applicants for the multiple family rental ADUs subject to preferential offering to the Fairfax County Redevelopment and Housing Authority, the Notice should be submitted at least 60 days prior to the issuance of Residential Use Permits for the units being offered.

Questions about this Notice or any of the required attachments should be directed to Special Projects, DHCD, at 703-246-5112.

Name of Development: \_\_\_\_\_

**AFFORDABLE DWELLING UNIT PROGRAM  
NOTICE OF AVAILABILITY  
AND  
RENTAL ADU OFFERING AGREEMENT  
Multifamily Units**

This AGREEMENT, made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ is by and between \_\_\_\_\_ (Applicant) and the Fairfax County Redevelopment and Housing Authority (Authority).

WHEREAS, Applicant desires to offer for rent as Affordable Dwelling Units (hereafter referred to as ADUs) certain dwelling units in the Development (as defined below), pursuant to the provisions and requirements of Chapter 112 (Zoning), Article 2, Part 8 of the 1976 Fairfax County Code, as amended (the ADU Ordinance), and the Regulations Concerning the Sale and Rental of Affordable Dwelling Units adopted by the Authority (the Regulations).

NOW, THEREFORE, in consideration of the mutual premises, conditions, and obligations provided for herein, the parties hereby agree as follows:

**1. Notice of Availability:** Applicant will offer for rental as ADUs \_\_\_\_\_ (number) dwelling units as identified and located in the apartment development. The apartment development and land is commonly known as \_\_\_\_\_ (the Development). In Schedule A, attached hereto, the land which is improved with the subject apartments is described, and the units in the development initially designated for rental as ADUs are identified by address and unit number. The Applicant may change the dwelling units designated as ADUs from time to time, as contemplated by the ADU Ordinance, as the Applicant, in its discretion, deems appropriate to accommodate demand of prospective tenants for various unit types; provided that, at all times, \_\_\_\_\_ dwelling units in the Development shall be designated as ADUs. The Applicant will notify the Authority of changes in the dwelling units designated as ADUs. The number of bedrooms in the ADUs shall be proportional to the bedroom mix of market rate units, unless the Applicant shall elect to provide a higher percentage of ADUs with a greater bedroom count.

**2. Occupancy and Rental Rate:** One-third of the multifamily dwelling units designated as ADUs shall be made available to households meeting Applicant's normal rental criteria (including credit requirements), with incomes that do not exceed 50% of the Washington, D.C. MSA Median Income. These ADUs are subject to the Preferential Offering discussed in Section 3 of this Agreement. The remaining two-thirds of the multifamily dwelling units designated as ADUs shall be made available to households meeting Applicant's normal rental criteria (including credit requirements) with incomes that do not exceed 70% of the Washington, D.C. MSA Median Income. In addition to income eligibility requirements, tenants of dwelling units designated as ADUs shall have a household size appropriate for the unit being rented, in accord with the guidelines issued by the Authority. Preference is to be given to applicants who live and/or work in Fairfax County. The allowable rental rate for each type of dwelling unit designated as an ADU shall not exceed the applicable allowable limits established periodically by the County Executive pursuant to the ADU Ordinance. The Applicant will not be obligated to lease any dwelling unit to a tenant who does not meet the Applicant's standard credit requirements.

**3. Preferential Offering:** For a period of 30 days from the date of receipt of this Agreement by the Authority, there is a preferential ADU offering during which the Applicant must make up to one-third of the multifamily rental ADUs available to households having incomes that do not exceed 50% of the Washington, D.C. MSA Median Income which are certified as income eligible by the Department of Housing and Community Development (DHCD) on behalf of the Authority. The Applicant will not exclude households which are eligible for state and local rental subsidies. On behalf of the Authority, DHCD will certify that these households are income eligible to rent the subject ADUs.

If the Authority does not make available to the Applicant on a timely basis names of eligible individuals and families in a sufficient number to lease the \_\_\_\_\_ dwelling units available as ADUs for households with incomes up to 50% of the Washington, D.C. MSA Median Income, or if the individuals and families identified by the Authority do not meet the Applicant's standard credit requirements, or otherwise do not lease dwelling units, then (subject to Section 2) the dwelling units subject to this preferential offering may be offered by the

Applicant for rent to households otherwise identified by it whose income does not exceed 50% of the Washington, D.C. MSA Median Income, subject to the rental price limits contained in this Agreement.

**4. Delivery:** In order for the Authority to refer prospective tenants to the Applicant who are certified as eligible to rent the multifamily ADUs designated for households with incomes up to 50% of the Washington, D.C. Metropolitan Statistical Area (MSA) Median income within the time frames specified, the Applicant acknowledges that this Agreement and the Notice of Availability contained herein should be received by the Authority at least 60 days prior to the issuance of Residential Use Permits (RUPs) for the units offered.

**5. Physical Description of Individual Units:** The physical description of each dwelling unit initially designated as an ADU, along with the items contained in each such dwelling unit, is listed in Schedule C, attached hereto and made a part hereof. Applicant warrants and guarantees that each dwelling unit initially designated as an ADU will conform, at the time of delivery by Applicant, to the minimum specifications for ADUs, as approved by the Authority and as in effect as of the date of site plan approval for the Development. The Authority has the right to inspect the dwelling units in the Development to determine if the Applicant has complied with the minimum specifications.

**6. Administration of Rental ADUs:** The Applicant shall establish that each individual or family that leases a dwelling unit designated as an ADU has an income that qualifies it for occupancy of such dwelling unit, using the Rental ADU Income Certification form provided by the Authority. Annually, the Applicant will obtain from each individual or family that leases a dwelling unit designated as an ADU a new, signed, Rental ADU Income Certification Form establishing the continued eligibility of such individual or family, based on the then current income, together with a signed Occupancy Affidavit (in the form provided by the Authority) certifying that such individual or family continues to occupy the dwelling unit. Initial leases for dwelling units designated as ADUs shall be for a minimum 6-month time period and a maximum one-year time period, and such leases shall contain, as part of the lease or as an addendum thereto, the provisions mandated by the ADU Ordinance.

On or before the tenth day of the month following the month of execution of a rental agreement for a dwelling unit designated as an ADU, the Applicant must provide DHCD, on behalf of the Authority, the following documents:

- (1) a copy of the tenant's rental application,
- (2) a copy of the executed rental agreement (lease),
- (3) the Rental ADU Lease Restriction Addendum,
- (4) the Rental ADU Income Certification Form, with supporting documentation .

**7. Owners Certification Form and Monthly Report:** On or before the tenth day of every month, the Applicant must provide DHCD with the Owner Certification Form and the Rental ADU Monthly Report on the forms provided by DHCD on behalf of the Authority.

The initial Rental ADU Monthly Report is due after the first dwelling unit designated as an ADU is occupied. Applicant shall provide DHCD, on behalf of the Authority, with a statement, verified under oath that certifies, as of the first of such month and each month thereafter: (1) the address and name of the Development and name of the owner; (2) the number of ADUs leased (other than those leased to the Authority, if any) and the number of ADUs vacant, in each case specifying the unit number and the bedroom count for the dwelling unit; and (3) for each occupied ADU, the following information:

1. Each unit address and bedroom count
2. Tenant name and household size
3. Effective date of the lease
4. Tenant's household income as of lease date or the most-recent certification
5. The current monthly rent

With each such certification, the Applicant shall provide a copy of each new or revised annual Rental ADU Certification form and Rental ADU Annual Occupancy Affidavit obtained from the renters of ADUs and not previously provided to DHCD. Applicant will document that, to its knowledge, preference was given toward leasing dwelling units designated as ADUs to tenants who live and/or work in Fairfax County. Applicant will also document that, to its knowledge, tenants leasing dwelling units designated as ADUs meet the eligibility criteria and

occupancy requirements as contained in Section 4(D) of the Regulations Concerning the Sale and Rental of Affordable Dwelling Units, as revised, and this Agreement.

**8. Declaration of Covenants:** At or before the time of execution of this Agreement by the Applicant, Applicant must supply DHCD with a copy of the original and duly executed Declaration of Covenants, with evidence of recordation, subjecting all required ADUs in the Development to the requirements of the Fairfax County Zoning Ordinance, as amended.

**9. Attachments:** Attached hereto and made a part hereof are the following schedules and/or documents:

- A. Rental ADU project information and notification of rental ADUs being offered (see Schedule A, attached).
- B. Rental ADU general information sheet (see Schedule B, attached).
- C. Rental ADU certification of conformance (see Schedule C, attached).
- D. Floor plans for each unit type.
- E. Two copies of the site plan.
- F. Executed Declaration of Covenants (for all ADUs), with evidence of recordation.

NOTE: If the Applicant has submitted exhibits D and E at an earlier date and if exhibit F has been submitted with an earlier Offering Agreement for this development, then these exhibits need not be submitted again. However, the Applicant must attach a statement affirming that none of the information provided has changed.

**10. Binding Effect:** This Agreement is binding upon Applicant and the Applicant's successors and assigns.

**11. Notices and Liason:** Any notice sent pursuant to this Agreement must be delivered in writing to the Authority as follows:

Fairfax County Department of Housing and Community Development

3700 Pender Drive, Suite 300  
Fairfax, Virginia 22030-7444  
Attention: ADU Compliance Coordinator, Special Projects

Notices to the Applicant shall be sent to:

**12. Survival:** The terms of this Agreement survive the execution and delivery of any deeds or leases and do not merge therein.

**13. Applicable Laws and Regulations:** Applicant agrees to abide by and comply with all applicable laws and regulations regarding the subject matter of this Agreement, whether or not such laws or regulations are herein specifically enumerated or referred to.

**14. Severability:** If any part, portion or provision of this Agreement is found to be null, void, illegal or unenforceable for any reason by any court or governmental regulations or ruling, then only such part, portion or provision will be affected thereby, and the remainder of this Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the Applicant has caused these presence to be executed by \_\_\_\_\_ (name), its \_\_\_\_\_ (title), and its corporate seal to be affixed, and the Authority has on the day and year, hereinafter written, caused these presence to be signed

by \_\_\_\_\_ (name), its \_\_\_\_\_ (title)

WITNESS: APPLICANT

\_\_\_\_\_ BY: \_\_\_\_\_

ITS: \_\_\_\_\_

STATE OF \_\_\_\_\_, COUNTY OF \_\_\_\_\_, to wit:

I HEREBY CERTIFY that before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared \_\_\_\_\_, who executed the above instrument, acting for \_\_\_\_\_ for the uses and purposes herein contained.

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.  
My Commission Expires: \_\_\_\_\_

\_\_\_\_\_  
Notary Public

WITNESS: FAIRFAX COUNTY (VIRGINIA)  
REDEVELOPMENT AND HOUSING AUTHORITY

\_\_\_\_\_  
BY: \_\_\_\_\_  
ITS: \_\_\_\_\_

The 30-day preferential offering period will begin on \_\_\_\_\_.  
(The above date will be determined by the Authority)

STATE OF VIRGINIA, COUNTY OF FAIRFAX, to wit:  
I HEREBY CERTIFY that before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared \_\_\_\_\_, Assistant Secretary of the Fairfax County Redevelopment and Housing Authority, who executed the foregoing instrument in the name and on behalf of the Authority for the uses and purposes herein contained.

WITNESS my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_



**SCHEDULE A  
RENTAL ADU PROJECT INFORMATION  
AND  
IDENTIFICATION OF ADUS BEING INITIALLY OFFERED  
Multifamily**

**Project Information**

1. Development Name: \_\_\_\_\_  
Is this the legal name of the development? Yes \_\_\_\_ No \_\_\_\_  
If not, what is the legal name? \_\_\_\_\_
2. Location (City/Town/Area): \_\_\_\_\_
3. Developer Name: \_\_\_\_\_  
Developer Address: \_\_\_\_\_  
\_\_\_\_\_
4. Zoning Case No.: \_\_\_\_\_
5. Site Plan No.: \_\_\_\_\_

**Rental ADUs Being Initially Offered**

List individually according to unit type and rent category, e.g., three bedroom, 1 and 1/2 bath,,  
renting to 50% households, name of unit, if any,

**Unit Type #1; Description:** \_\_\_\_\_

Number of Units: \_\_\_\_\_

<u>Unit #</u>	<u>Street Address</u>	<u>Tax Map Number</u>	<u>Building Permit Number</u>	<u>Building Permit Issue Date</u>
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**SCHEDULE A**  
Continued (Use as many pages as needed)  
**Rental ADUs Being Initially Offered**

**Unit Type #** \_\_\_\_\_; Description: \_\_\_\_\_

No. Of Units: \_\_\_\_\_

<u>Unit #</u>	<u>Street Address</u>	<u>Tax Map Number</u>	<u>Building Permit Number</u>	<u>Building Permit Issue Date</u>
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**Unit Type #** \_\_\_\_\_; Description: \_\_\_\_\_

No. Of Units: \_\_\_\_\_

<u>Unit #</u>	<u>Street Address</u>	<u>Tax Map Number</u>	<u>Building Permit Number</u>	<u>Building Permit Issue Date</u>
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**SCHEDULE B  
RENTAL ADU GENERAL INFORMATION SHEET**

1. Who is the contact person for information about \_\_\_\_\_?

Development Name

Name: \_\_\_\_\_ Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_

2. Is this the party which signed the Rental ADU Offering Agreement? Yes \_\_\_ No \_\_\_

If not, who signed the Rental ADU Offering Agreement? \_\_\_\_\_

3. Are utilities being paid by the owner? Yes \_\_\_ No \_\_\_; Tenant? Yes \_\_\_ No \_\_\_

List any utilities to be paid by the tenant:

Item	Estimated Monthly Cost
_____	_____
_____	_____
_____	_____

4. What is the required security deposit? \_\_\_\_\_

5. What (if any) restrictions will be placed on the tenant (e.g., no pets, no campers, etc.)?

\_\_\_\_\_

\_\_\_\_\_

**Approved Rental Rates:**

Unit Size/ Type	Rental rate 50%/65%	(less)	Value of any utilities included in rent	=	Net Rent	Max Rent Allowed
_____	\$ _____	-	\$ _____	=	\$ _____	\$ _____
_____	\$ _____	-	\$ _____	=	\$ _____	\$ _____
_____	\$ _____	-	\$ _____	=	\$ _____	\$ _____
_____	\$ _____	-	\$ _____	=	\$ _____	\$ _____
_____	\$ _____	-	\$ _____	=	\$ _____	\$ _____
_____	\$ _____	-	\$ _____	=	\$ _____	\$ _____
_____	\$ _____	-	\$ _____	=	\$ _____	\$ _____
_____	\$ _____	-	\$ _____	=	\$ _____	\$ _____

**SCHEDULE C  
INDIVIDUAL RENTAL ADU  
CERTIFICATION OF CONFORMANCE**

Describe the items included in the rent for each ADU. This form must be completed and notarized for each ADU.

1. Project Name: (From Schedule A) \_\_\_\_\_
2. Owner/Agent: \_\_\_\_\_
3. Unit Being Offered (From Schedule A):  
Unit # \_\_\_\_\_ Address: \_\_\_\_\_  
Unit Type/#/Name: \_\_\_\_\_ Rent: \_\_\_\_\_
4. Floor Area: \_\_\_\_\_
5. Number of Bedrooms: \_\_\_\_\_
6. Number of Baths: \_\_\_\_\_  
Full \_\_\_\_\_ Half \_\_\_\_\_
7. Dishwasher \_\_\_\_\_; Washer & Dryer \_\_\_\_\_  
Yes No Yes No
8. Other Features: \_\_\_\_\_  
(e.g., type of heat, carpeting, disposal, deck, patio )
9. Amenities: \_\_\_\_\_  
(e.g., tot lot, pool, tennis court)
10. Does this unit contain accessibility features described in Section 4(A) of the FCRHA Administrative Regulations? \_\_\_\_\_yes\_\_\_\_\_no

In compliance with Section 2, Part 8 of the Zoning Ordinance of Fairfax County, I hereby certify that the Affordable Dwelling Unit, referenced above, shall be constructed in accordance with the **Specifications for Prototype ADUs** as approved by the Fairfax County Redevelopment and Housing Authority on June 14, 1990 and the Affordable Dwelling Unit Advisory Board on June 18, 1990, and as shall be amended from time to time. Failure to comply with the specifications shall be subject to the enforcement provisions of Section 2-818 of the Zoning Ordinance.

Signature \_\_\_\_\_  
Name \_\_\_\_\_ Title \_\_\_\_\_  
State of \_\_\_\_\_, County of \_\_\_\_\_, to wit:

The foregoing instrument was acknowledged before me, a notary public in the State and County aforesaid,

this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_ (name), in his/her capacity as \_\_\_\_\_ (title) of \_\_\_\_\_

\_\_\_\_\_  
Notary Public (print name)

My Commission Expires: \_\_\_\_\_